FCC 94-145

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

In the Matter of	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

NOTICE OF PROPOSED RULE MAKING AND NOTICE OF INQUIRY

Adopted: June 9, 1994; Released: July 1, 1994

Comment Date: August 30, 1994

Reply Date: September 29, 1994

By the Commission: Commissioners Quello, Barrett and Chong issuing separate statements.

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I. INTRODUCTION

1. This proceeding initiates a rule making and inquiry to address three questions reserved for later consideration in the *CMRS Second Report*[1] and raised in a petition for rule making filed earlier by MCI Telecommunications Corporation (MCI).[2] First, this rule making proceeding considers whether to impose equal access obligations upon commercial mobile radio service (CMRS) providers. Second, we consider rules to govern requirements for interconnection service provided by local exchange carriers (LECs) to CMRS providers. Third, we are issuing a notice of inquiry to determine whether to propose rules requiring CMRS providers to interconnect with each other.

2. This Notice of Proposed Rule Making and Notice of Inquiry (*"Notice"*) continues the Commission's evaluation of the CMRS marketplace launched by the recent revisions to the Communications Act.[3] By amending Section 332, Congress sought to replace traditional

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[1] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, Gen. Docket No. 93-252, 9 FCC Rcd 1411, 1448-1463, 1508 (1994) (*CMRS Second Report*).

[2] MCI Telecommunications Corporation, Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making, filed June 2, 1992 (MCI Petition). On August 2, 1992, the Commission issued a Public Notice, establishing a pleading cycle for comments and reply comments. *See* FCC Public Notice, DA No. 92-745, June 10, 1992; Policies and Rules Pertaining to Equal Access Obligations of Cellular Carriers, 7 FCC Rcd 4987 (Com.Car.Bur. 1992). Fifty parties filed comments and six parties filed reply comments. For a list of commenting parties see Appendix A. All comments filed in RM-8012 are hereby incorporated into this docket. We hereby grant the motion of TDS to accept its late-filed pleading in RM-8012. We further incorporate all pleadings filed in General Docket No. 93-252, which are also listed in Appendix A.

[3] *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), (B), 107 Stat. 312, 392 (1993), (*Budget Act*), *to be codified at* 47 U.S.C. §§ 303(n), 332; Communications Act of 1934 *as amended* (Communications Act), §§ 203, 204, 205, 211, 212, 214, 47 U.S.C. §§ 203, 204, 205, 211, 212, and 214. Section 332 defines CMRS as "any mobile service ... that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available

regulation of mobile service with a comprehensive, consistent regulatory framework that gives the Commission flexibility to establish appropriate levels of regulation for mobile radio service providers. Commercial mobile radio service providers are treated as common carriers under the Communications Act, except that the Commission may forbear from applying the provisions of Title II other than Sections 201, 202, and 208.[4] We determined that Congress had two principal objectives in amending Section 332. First, Congress sought to ensure that similar services would be subject to consistent regulatory classification. Second, Congress sought to impose a reasonable level of regulation for CMRS providers, and to avoid unwarranted regulatory burdens for any mobile radio licensees classified as CMRS providers. In the *CMRS Second Report*, the Commission reasoned that its decisions implementing an even-handed regulatory scheme under Section 332 would promote competition by refocusing competitors' efforts away from strategies in the regulatory arena and toward technological innovation, service quality, competitive pricing, and responsiveness to consumer needs.[5]

3. Based upon the record before us, and mindful of the goals and policies of Section 332 and the *CMRS Second Report*, we tentatively conclude that, in concept, equal access obligations should be imposed on cellular licensees. We also seek comment on the costs and benefits of imposing equal access obligations on any other class of CMRS provider. As a general matter, we believe these obligations to be in the public interest because equal access would increase competition in the interexchange and mobile services marketplace, and also foster regulatory parity between wireline and wireless services. We tentatively conclude that the full panoply of equal access requirements that apply to landline LECs should not apply to CMRS providers, and seek comment on whether equal access requirements should be tailored to meet the individual circumstances of particular commercial mobile radio services.

4. Further, we seek comment on whether to require LECs to offer interconnection to CMRS providers under tariff, or whether to retain the existing requirement that LECs provide interconnection to CMRS providers pursuant to good faith contractual negotiations. We also seek comment on whether, in lieu of imposing a tariffing requirement, we should adopt certain minimum requirements for negotiated interconnection arrangements to prevent LECs from imposing unreasonably discriminatory interconnection arrangements upon new market entrants.

5. In this proceeding, we are also beginning an inquiry regarding specific issues of interconnection among CMRS providers. We seek to gather information on technical developments related to interconnection protocols, procedures, and facilities, to explore the significance of these developments for CMRS, and to seek comment on how Commission regulation can best foster interconnection between new services in the mobile telecommunications

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to a substantial portion of the public." Communications Act, § 332 (d)(1), 47 U.S.C. § 332 (d)(1).

[4] *See CMRS Second Report* at 1478-1480.

[5] *See Id.* at 1418-1420.

marketplace. As part of our inquiry into CMRS interconnection, we will explore whether to require CMRS providers to offer interconnection to resellers of CMRS in order to provide for switch-based resale of CMRS. We also seek comment on whether to impose resale obligations on any additional class of CMRS provider.

II. EQUAL ACCESS

A. Background

1. Current Equal Access Requirements

6. Most landline LECs are now subject to equal access obligations, that is, the obligation to treat equally all interexchange carriers (IXCs) seeking access to the local exchange network. The equal access obligations currently borne by cellular affiliates of Bell Operating Companies (BOCs) grew out of the Bell System divestiture decree (Modification of Final Judgment or "*MFJ*").[6] The *MFJ* requires the BOCs to offer access to the local exchange network to all interexchange carriers that is "equal in type, quality, and price" to that offered to AT&T and its affiliates.[7] Traffic which crosses a local access and transport area (LATA) boundary must, with some geographic exceptions permitted by the *MFJ* court, be handed off to the IXC selected by the subscriber.[8] Eliminating interconnection disparities between IXCs was found to be in the public interest because it removed barriers to entry and permitted unfettered competition between AT&T and other IXCs.[9] The *MFJ* allows end user customers to presubscribe to the IXC of their choice for all interLATA calling. Customer choice of interLATA carriers forces IXCs to compete to serve end users on the basis of price, service quality and responsiveness of their service offerings to customer demand, and thus enhances IXC competition.

7. For wireline carriers, the equal access obligation has been applied to local exchange service and was implemented in phases by the *MFJ* court and the Commission over a period of several years. The *MFJ* established a three-year schedule following divestiture for BOC conversion to equal access. Equal access conversion primarily involved development and

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[6] United States v. AT&T, 552 F.Supp. 131, (D.D.C. 1982) *aff'd sub nom* Maryland v. U.S., 460 U.S. 1001 (1983) (*MFJ*).

[7] *MFJ*, 552 F.Supp. at 227.

[8] The term "LATA" was created for use in the *MFJ* proceedings to avoid confusing a traditional telephone "exchange area" with the unique geographic areas created under the terms of the decree. United States v. Western Electric Co., 569 F.Supp. 990, 993 n.9 (D.D.C. 1983).

[9] *MFJ*, 552 F.Supp. at 195-196.

installation of new software in the BOC end office switches.[10] Approximately 94.4 percent of BOC end offices had been converted as of May 1, 1994.[11] Under the *MFJ*, the BOCs must provide to their customers, during the ninety days immediately preceding and the ninety days immediately following the conversion of an end office to equal access, certain information including: (1) reasonably detailed data concerning AT&T and its competitors serving the area; (2) notification to customers that the initial designation of an interexchange carrier is free, but that there may be a fee for a subsequent designation; (3) advice to the customer that if a selection is not made during the 180 day period, a later selection process might be more difficult because after the 180 day period, the BOC is only obliged to advise the customer of the availability of different IXCs.[12] The preceding information must be provided to the customers at least by means of inserts in monthly bills.[13] Customers could also make individual arrangements for service with an IXC. If no such arrangements were made, the customer was defaulted to AT&T.[14]

8. In 1983, GTE announced its plan to merge with Sprint Communications Corporation, L.P. The Justice Department subsequently filed an antitrust suit against GTE, and concurrently filed a proposed consent decree signed by the parties to settle the suit. Under this decree, each GTE operating company is required to provide access to all interexchange carriers and information service providers "equal in type and quality to that provided AT&T or other interexchange carriers. . . ." GTE's LATAs were defined according to the same criteria that were used for the BOCs, and GTE's LATA boundaries have been the subject of several waivers.[15] The *MFJ* and GTE consent decree together impose equal access obligations on LECs serving 91.7 percent of the nation's access lines.[16]

9. The Commission, in 1985, adopted equal access requirements for all landline, independent LECs, including GTE, in order to encourage competition by affording all IXCs

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[10] *Id.* at 232.

[11] *See* Industry Analysis Division, Federal Communications Commission, "Trends in Telephone Service" (released May, 1994), at Table 12, Table 13. Percentage of access lines converted is greater than the percentage of converted central offices because the non equal access offices tend to be smaller offices in rural areas.

[12] *MFJ*, 552 F.Supp. at 233.

[13] *See* United States v. Western Electric Co., 578 F.Supp. 668, 676-677 (D.D.C. 1983).

[14] *See id.* at 675.

[15] *See* United States v. GTE Corp., 603 F.Supp. 730, 744-46 (D.D.C. 1984).

[16] *See* Statistics of Communications Common Carriers, 1992-1993, Federal Communications Commission (November 1993) Table 1.1, Table 2.3.

equal access to their customers "on a reasonably uniform basis nationwide."[17] As the Commission explained, "in a more fragmented and competitive telecommunications industry the interconnection 'ground rules' must be set at the outset, particularly inasmuch as interconnection often represents the sole means for competitive carriers (and providers of equipment and facilities) to access their customers."[18] The Commission used the *MFJ*'s definition of equal access in adopting equal access rules for independent LECs.[19]

10. After it held in the *Allocation Order* that the process of defaulting the traffic of customers that had not presubscribed to an IXC to AT&T was an unreasonable practice under Section 201(b) of the Act,[20] the Commission directed the LECs to implement, with certain modifications, a Balloting and Allocation Plan developed by Northwestern Bell Telephone Company.[21] The end office conversion process is now routine, so there are few problems with equal access conversion. The same cannot be said for customer selection of a primary interexchange carrier (PIC).

11. The original allocation plan adopted by the Commission required IXCs to have a letter of agency (LOA) signed by the customer on file before submitting a PIC change order to the LEC on behalf of the customer.[22] The requirement was subsequently modified to allow IXCs to place PIC change orders if they had instituted steps to obtain signed LOAs.[23] Customer complaints alleging that they had been switched to other carriers without the customer's permission caused the Commission to adopt confirmation procedures that IXCs must follow

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[17] MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, 94 FCC 2d 292, 296-97 (1983) (*MTS/WATS Notice*); MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, 100 FCC 2d 860 (1985).

[18] *MTS/WATS Notice* at 298.

[19] *See* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 911 (1985) (*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 935 (1985) (*Waiver Order*).

[20] *See Allocation Order*, 101 FCC 2d at 920.

[21] Balloting is the part of the presubscription process in which LECs send customers ballots on which they select their primary IXC. *See Allocation Order*, 101 FCC 2d at 924-927; Appendix B. *See* paras. 86-87, *infra*.

[22] *Allocation Order*, 101 FCC 2d at 929.

[23] *Waiver Order*, 101 FCC 2d at 942.

before submitting change orders to LECs on behalf of customers.[24]

12. Application of LATA boundaries and equal access obligations to BOC cellular affiliates was not specifically addressed in the decree itself, but in subsequent orders of the *MFJ* court. The question of the applicability of *MFJ* obligations to BOC cellular affiliates arose when the BOCs sought permission to offer mobile radio services across certain LATA boundaries. The *MFJ* court granted the petition, noting that provision of "any and all mobile radio services without regard to LATA boundaries. . .would have been entirely inconsistent with the terms and purposes of the decree, and the Court would not have authorized it."[25] Later, after the U.S. Court of Appeals ruled that extra-regional cellular service is a permitted "exchange telecommunications service" within the meaning of the *MFJ*,[26] the district court concluded that the *MFJ*'s equal access obligations also applied to BOC-affiliated cellular operations.[27] Courts have not ruled on the application of equal access obligations to cellular affiliates of GTE. Consequently, at present, BOC cellular affiliates must provide equal access, but other cellular licensees and CMRS providers, who are not subject to the *MFJ*, are not obliged to do so.

2. MCI Petition

13. On June 2, 1992, MCI filed a petition requesting that we initiate a rule making proceeding to apply uniform, nationwide policies and rules to the provision of interexchange equal access by cellular licensees.[28] MCI believes this will promote interexchange competition and eliminate what it alleges to be unfair, bundled service arrangements offered by non-BOC cellular companies. MCI argues that although all cellular licensees offer their subscribers the

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[24] *See* Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992) (*PIC Verification Order*).

[25] *See* United States v. Western Electric Co., 578 F.Supp. 643, 647 (D.D.C. 1983). *See also* United States v. Western Electric Co., 673 F.Supp. 525 (D.D.C. 1987).

[26] *See* United States v. Western Electric Co., 797 F.2d 1082, 1089, 1091 (D.C. Cir. 1986).

[27] The district court made equal access a condition to the provision of extraregional cellular service by the BOCs, and subsequently affirmed the application of equal access requirements to all BOC cellular operations. *See* United States v. Western Electric Co., No. 82-0192, para. 8 (D.D.C. Feb. 26, 1986) (permitting PacTel acquisition of extraregional cellular operations subject to equal access obligations); United States v. Western Electric Co., No. 82-0192, para. 5, (D.D.C. Oct. 31, 1986) (permitting BellSouth acquisition of controlling and minority interests in extraregional cellular operations and imposing equal access obligations upon those cellular operations in which BellSouth would have a substantial investment). *See also* United States v. Western Electric Co., Civil Action No. 82-0192 (HHG), Case Nos. 971 and 2416, 1990-2 Trade Cas. ¶69,177 (Sept. 12, 1990).

[28] MCI Petition at 1.

capability to make interexchange calls, only the BOCs, by reason of the action of the *MFJ* court, are subject to equal access obligations. It alleges that the non-BOC cellular companies do not offer their customers the option of presubscribing to a preferred interexchange carrier but rather resell interexchange service to their subscribers at "full market rates."[29] MCI charges that in denying their customers the freedom to select an interexchange carrier, cellular licensees are also forcing their subscribers to pay premium rates.[30] MCI adds that the existing policy does not follow the Commission's stated interest in adopting "'rules conducive to full and fair interexchange competition.'"[31] MCI also argues that the absence of a uniformly applicable cellular equal access requirement unreasonably inhibits MCI's ability to serve its customers and prevents customers from using the interexchange carrier of their choice when roaming[32] on non-equal access cellular systems.[33] MCI further contends that equal access is both necessary and appropriate to make cellular service an integral part of the seamless, integrated nationwide telecommunications network.[34]

3. Commercial Mobile Radio Services

14. After the comments were filed with respect to the MCI Petition, but before the Commission acted on it, Section 332 of the Communications Act was revised.[35] Mobile services are now classified as either "commercial mobile radio service" or "private mobile radio service." In the *CMRS Second Report*, we concluded that the following services meet the statutory definition of a commercial mobile radio service: Part 22 public mobile services, including air-to-ground service; Public Coast Stations; private paging, except for internal use; 220 MHz Private Land Mobile, except for internal use or when not interconnected with the public switched network; Specialized Mobile Radio (SMR) services, unless not interconnected with the public switched network, and wide-area Specialized Mobile Radio services; business radio service, except for internal use or when not interconnected with the public switched network; personal

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[29] MCI Reply Comments on MCI Petition at 3.

[30] *Id. See also* CompTel Comments on MCI Petition at 4; Wiltel Comments on MCI Petition at 8-9.

[31] *Id., citing* Transport Rate Structure and Pricing, CC Docket No. 91-213, Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 5341, 5343 (1991).

[32] Roaming capability permits cellular subscribers to originate or receive calls when using their cellular telephones outside of their cellular carrier's license area.

[33] MCI Reply Comments on MCI Petition at 4.

[34] *Id.* at 7.

[35] *See* note 3, *supra*.

communications services (PCS); and certain mobile satellite services (MSS).[36]

15. In the *CMRS Second Report*, we deferred consideration of whether equal access obligations should be imposed upon PCS providers to consider together the applicability of equal access obligations to PCS providers, cellular licensees and all other CMRS providers.[37] We approach the issues of equal access and interconnection with the goals and policies of Section 332 and the *CMRS Second Report* in mind.[38]

B. Costs and Benefits of Equal Access Obligations for Commercial Mobile Radio Service Providers

1. Positions of the Parties

16. The record with respect to the costs and benefits of imposing equal access obligations on CMRS providers consists primarily of comments filed in response to MCI's 1992 petition for rule making. Some of the comments filed in the more recent *CMRS Proceeding* also address this issue.

17. **Benefits.** Many commenters, including both large and small IXCs, NARUC and two state public utility commissions, and one cellular aggregator, support imposition of equal access requirements on cellular providers.[39] Some BOCs, while preferring the elimination of equal access obligations for all cellular providers, advocate that the Commission establish a level playing field for all CMRS providers in the event that the Commission determines that equal access is in the public interest.[40]

18. MCI and other interexchange carriers argue that equal access promotes competition in the interexchange market and therefore benefits consumers.[41] These commenters

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[36] *See CMRS Second Report*, 9 FCC Rcd at 1443-1463, 1508.

[37] *CMRS Second Report*, 9 FCC Rcd at 1499, 1514.

[38] *See* para. 2, *supra*.

[39] *See e.g.*, AT&T Comments on MCI Petition at 1-4; ATC Comments on MCI Petition at 1-2; NARUC Comments in GN Docket No. 93-252 at 11; California Comments in GN Docket No. 93-252 at 11.

[40] *See e.g.*, Bell Atlantic Comments in GN Docket No. 93-252 at 30-35; Southwestern Comments in GN Docket No. 93-252 at 31.

[41] *See* MCI Petition at 5; MCI Reply Comments on MCI Petition 2-3; MCI Comments in GN Docket No. 93-252 at 11-12. *See also* Allnet Comments on MCI Petition at 1; AT&T Comments on MCI Petition at 3-4; ATC Comments on MCI Petition at 1-2; Comptel Comments

claim that many long distance customers who use cellular service are denied the same range of competitive choice they now enjoy in selecting IXCs for landline services. Likewise, IXCs' opportunities to compete on the basis of innovative features and services offered to those customers are diminished.[42] MCI argues that equal access is both necessary and appropriate to make cellular service an integral part of the seamless, integrated nationwide telecommunications network.[43] MCI argues that wholesale competition among IXCs for the carriage of all of a cellular system's long distance traffic is not sufficient competition. Without equal access, MCI warns, the telephone system in this country will become increasingly fragmented, an outcome that will eventually threaten the smooth operation of even basic service.[44]

19. MCI contends that equal access is the means by which the benefits of the billions of dollars invested by local and long distance companies in intelligent network infrastructure can be extended to the wireless customer. MCI predicts that the new era of competition in telecommunications will feature services, particularly PCS, that use intelligent networks, computerized databases, and very high speed signalling. MCI warns, however, that without equal access, neither it nor any other IXCs that have highly sophisticated intelligent networks can offer services on a competitive basis to all cellular customers. MCI claims that if equal access were uniformly available, the chief beneficiaries would be the cellular carriers and their customers, because equal access would generate additional cellular call volume and, in particular, more land-to-mobile traffic.[45]

20. NARUC and two state public utilities commissions contend that equal access for cellular carriers is consistent with the policy considerations that led to the application of equal access to landline LECs.[46] The Ohio PUC expresses concern that non-BOC cellular customers are forced to accept service from the IXC chosen by the non-BOC cellular carriers, rather than the customer's preferred IXC.[47] The Ohio PUC claims that imposing uniform equal access

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on MCI Petition at 2-3; OCOM Comments on MCI Petition at 1-3; Sprint Comments on MCI Petition at 1-2; Wiltel Comments on MCI Petition at 1-2.

[42] *See* AT&T Comments on MCI Petition at 3. *See also* MCI Reply Comments on MCI Petition at 2-6; ATC Comments at 1-2; Comptel Comments on MCI Petition at 4.

[43] MCI Reply Comments on MCI Petition at 6-12.

[44] *Id.* at 2-9.

[45] *Id.* at 9-10.

[46] *See* NARUC Comments in GN Docket No. 93-252 at 11; California PUC Comments in GN Docket No. 93-252 at 11, Comments on MCI Petition at 1-2; Ohio PUC Comments on MCI Petition at 2.

[47] Ohio PUC Comments on MCI Petition at 2.

obligations on all cellular carriers will provide the broadest range of choices, not only within the cellular market, but also in the interexchange market, to all customers served simultaneously in both markets.[48] Both the California PUC and the Ohio PUC contend that extension of equal access requirements to CMRS providers is especially important for establishing a level playing field in the local exchange marketplace, as wireless services are expected in the future to compete against the LECs' landline exchanges in the provision of local exchange service.[49]

21. Bell Atlantic and Southwestern would prefer the elimination of equal access requirements for cellular operators. In the alternative, they support equal treatment for all non-BOC-affiliated cellular licensees as well as all CMRS providers.[50] Southwestern, while urging the Commission to support Southwestern's efforts to obtain relief from the *MFJ*'s equal access requirement, argues that disparate treatment of CMRS providers does not serve the public interest.[51] Southwestern contends that similar treatment for all CMRS providers is especially important because, it argues, BOC-affiliated cellular carriers operating outside of their telephone affiliate's service area are from an economic or competitive sense indistinguishable from any other provider of CMRS.[52] Southwestern urges the Commission to consider extending equal access obligations beyond traditional cellular service to include services such as enhanced or wide-area SMR service and PCS.[53] One cellular company, Liberty, shares this view, claiming that if the Commission decides to extend equal access obligations to all cellular licensees, it should impose equal access requirements on all CMRS licensees.[54] USTA, whose membership includes both the BOCs and independent local exchange carriers, does not take a position on the merits of making equal access applicable to mobile providers, but argues that equal access should be required for providers of fixed cellular service.[55]

22. Although the *CMRS Notice* specifically sought comment on the equal access

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[48] *Id.* at 3-4.

[49] California PUC Comments in GN Docket No. 93-252 at 11; Ohio PUC Comments on MCI Petition at 4.

[50] Bell Atlantic Comments on MCI Petition at 1, 3-4; Bell Atlantic Comments in GN Docket No. 93-252 at 30; Southwestern Comments on MCI Petition at 15; Southwestern Comments in GN Docket No. 93-252 at 31. *See also* BellSouth Comments in GN Docket No. 93-252 at 34.

[51] Southwestern Comments in GN Docket No. 93-252 at 32.

[52] *Id.* at 32.

[53] *Id.* at 32-33.

[54] Liberty Comments in GN Docket No. 93-252 at 3.

[55] USTA Comments on MCI Petition at 1-3.

obligations of PCS providers,[56] most commenters addressed the entire class of CMRS providers without addressing the impact of imposing an equal access obligation on specific types of providers.[57] Bell Atlantic, BellSouth and others argue that until the *MFJ* court removes the equal access requirements for BOC cellular licensees, other wireless service providers, including PCS licensees, should be obligated to comply with these rules.[58] Southwestern reiterates its belief that if equal access is applied to cellular carriers, it should apply to all CMRS providers.[59] The California PUC claims that broadband PCS, although not yet operational, will compete with cellular providers and should not have a regulatory advantage over cellular.[60] Nextel contends that imposition of equal access burdens on its enhanced SMR systems would impose undue and unnecessary costs and administrative burdens on a start-up operation and would not, therefore, be in the public interest.[61]

23. PTC, a reseller of cellular telephone service, argues that imposition of equal access is necessary because users of cellular services frequently travel through service areas served by multiple carriers and should be able to establish an arrangement with a single IXC for

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[56] *See* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Notice of Proposed Rule Making, 8 FCC Rcd 7988, 8001-2 (1993) (*CMRS Notice*).

[57] During the past several months new alliances in the telecommunications marketplace have caused carriers to reexamine their positions on equal access. For example, although McCaw previously opposed equal access in its pleadings, following announcement of its proposed merger with AT&T, McCaw became a supporter of equal access, and pledged to provide equal access to its customers. *See* In the Matter of American Telephone and Telegraph Company and McCaw Cellular Communications Company, Applications for Consent to Transfer Control of Radio Licenses, File No. ENF-93-44, AT&T/McCaw Opposition to Petitions to Deny and Reply to Comments, (filed Dec. 2, 1993), at 43, 54-55.

[58] *See* Bell Atlantic Comments in GN Docket No. 93-252 at 30-31; BellSouth Comments in GN Docket No. 93-252 at 34. *See also* PTC Cellular Comments in GN Docket No. 93-252 at 11; Southwestern Comments in GN Docket No. 93-252 at 32-33.

[59] *See* Southwestern Bell Comments in GN Docket No. 93-252 at 32.

[60] *See* California PUC Comments in GN Docket No. 93-252 at 11.

[61] Nextel Comments on MCI Petition at 7. Nextel Communications, Inc., was known as Fleet Call, Inc., when it filed its comments on the MCI Petition. For purposes of this *Notice*, we will refer to this commenter as Nextel.

all the customer's interexchange traffic.[62] PTC claims that the 10XXX access blocking prohibition of Section 226 of the Act, 47 U.S.C. § 226, does not ensure customer choice because not all cellular carriers are operator service providers or aggregators subject to that section.[63] PTC contends that if resellers are required to provide equal access, they cannot comply unless the Commission also requires the underlying facilities-based cellular carrier to provide equal access.[64]

24. **Detriments/Costs**: Cellular licensees and their industry association, CTIA, strenuously oppose the imposition of equal access requirements.[65] CTIA, McCaw, and other commenters argue that there is no legal basis for imposing equal access obligation on non-BOC cellular licensees.[66] Specifically, CTIA contends that equal access obligations were imposed pursuant to the *MFJ* for reasons that do not apply to mobile services. CTIA asserts that a key factor was that the BOCs' control over a "bottleneck" facility prevented customer access to the long distance service of their choice and IXC access to potential customers.[67] Comcast argues that the *MFJ* imposed equal access obligations on the BOCs to minimize their anticompetitive behavior, and asserts that since the independent cellular providers have no history of anticompetitive behavior and no bottleneck facilities, they should not be subject to equal access obligations.[68]

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[62] PTC Cellular Comments in GN Docket No. 93-252 at 13. PTC Cellular is a reseller of cellular telephone service primarily in conjunction with rental cars. PTC Cellular enters into agreements with rental car firms to install its credit card activated cellular phones in rental cars, and resells cellular service to the end-user. *Id.* at 1.

[63] PTC Cellular Comments in GN Docket No. 93-252 at 12. Section 226 codifies the Telephone Operator Consumer Services Information Act of 1991, (TOCSIA), 47 U.S.C. § 226.

[64] *Id.* at 11-12.

[65] *See e.g.*, CTIA Comments on MCI Petition at 2-14; McCaw Comments on MCI Petition at 32.

[66] *See* CTIA Comments on MCI Petition at 3-6; McCaw Comments on MCI Petition at 3 n.2, 6 & n.5; McCaw Comments in GN Docket No. 93-252 at 32. *See also* GTE Comments on MCI Petition at 3; GTE Comments in GN Docket No. 93-252 at 22; Comcast Comments in GN Docket No. 93-252 at 16.

[67] *See* CTIA Comments on MCI Petition at 4-5. *See also* McCaw Comments on MCI Petition at 6; Vanguard Comments on MCI Petition at 3; Centel Comments on MCI Petition at 3-5.

[68] Comcast Comments on MCI Petition at 8-12; Comcast Comments in GN Docket No. 93-252 at 16-17.

25. Opponents also argue that there is little consumer demand for equal access.[69] The Opposing Group, which includes several non-BOC cellular operators, contends rather that customers are more concerned with cellular service features, including coverage area, the ability to roam on other systems, high quality signal, and a reasonable total monthly bill.[70] Moreover, they argue, nonwireline cellular licensees are able to purchase interexchange service in bulk at lower rates than individual customers and can pass those savings on to their customers, thus keeping their basic service rates at acceptable levels.[71]

26. CTIA, Pacific and others argue that PCS providers should not be subject to equal access requirements.[72] Telocator contends that PCS providers need maximum flexibility to design their networks, package services, and provide cost effective services based on market demand. Telocator asserts that imposition of equal access requirements would inhibit this activity and would therefore be contrary to Commission goals in licensing these services.[73] OPASTCO asserts that equal access is an attractive, but unworkable, concept in the mobile arena. OPASTCO contends that equal access would impose costs and burdens on small operators that would harm rural subscribers.[74]

27. CTIA and Vanguard assert that the technical difficulties and costs of implementing equal access outweigh the benefits for consumers.[75] BMCT and the Opposing Group estimate that the necessary software upgrades, coupled with the costs of conducting a

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[69] *See e.g.*, Opposing Group Comments on MCI Petition at 4-6; McCaw Reply Comments on MCI Petition at 5; Comcast Comments on MCI Petition at 3.

[70] Opposing Group Comments on MCI Petition at 4-5.

[71] *See* Unity Comments on MCI Petition at 5-6, 8. *See also* Comcast Comments on MCI Petition at 7-8; McCaw Comments on MCI Petition at 12-13; McCaw Reply Comments on MCI Petition at 8; Vanguard Comments on MCI Petition at 2-3.

[72] *See* CTIA Reply Comments in GN Docket No. 93-252 at 21; Pacific/Nevada Comments in GN Docket No. 93-252 at 21-22; GTE Comments in GN Docket No. 93-252 at 22-23; Liberty Comments in GN Docket No. 93-252 at 2-3; TDS Comments in GN Docket No. 93-252 at 20-21.

[73] Telocator Comments in GN Docket No. 93-252 at 25.

[74] OPASTCO Comments on MCI Petition at 2-4, 5.

[75] *See* CTIA Comments on MCI Petition at 10-14; Vanguard Comments on MCI Petition at 4-6. *See also* Rochester Comments on MCI Petition at 5-6.

program of presubscription, outweigh any perceived benefits from customer choice.[76] Telocator claims that equal access obligations are unnecessary in a competitive marketplace, creating unjustified costs, consumer inconvenience, and inefficient networks.[77]

28. Several cellular providers express concern about the technical feasibility of converting equipment to provide equal access capabilities.[78] They insist that a requirement to upgrade existing cellular switches would force cellular carriers to purchase new switches. GTE and In-Flight complain that the technical limitations on air-to-ground service make equal access virtually impossible to implement.[79]

29. Vanguard contends that, like the payphone industry, the instances of fraud in the cellular marketplace is already serious.[80] Vanguard argues that users have fraudulently employed "cloned" cellular telephones to place a large volume of international calls, creating a serious problem. Vanguard argues that the Commission must consider the added implications for fraud as part of any decision to require cellular equal access for non-wireline carriers.[81]

2. Discussion

a. Equal Access Obligations in General

30. In assessing interconnection issues, which include equal access, we tentatively conclude that two initial questions must be addressed. The first is whether the Commission has

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[76] BMCT Comments on MCI Petition at 2-3; Opposing Group Comments on MCI Petition at 8-9.

[77] Telocator Comments in GN Docket No. 93-252 at 24-25.

[78] *See e.g.*, Illinois Valley Cellular Comments in GN Docket No. 93-252 at 3-4; Pacific Telecom Cellular Comments in GN Docket No. 93-252 at 3-4. *See also* GTE Comments in GN Docket No. 93-252 at 22-23 (equal access is too costly to implement); Liberty Comments in GN Docket No. 93-252 at 3-5 (equal access is too costly to implement).

[79] *See* GTE Comments in GN Docket No. 93-252 at 18 *citing* GTE Petition for Reconsideration, MSD 92-14 (filed Sept. 27, 1993); In-Flight Reply Comments in GN Docket No. 93-252 at 1-2.

[80] Vanguard Comments on MCI Petition at 4 *citing* Policies Concerning Operator Access and Pay Telephone Compensation, CC Docket No. 91-35, 7 FCC Rcd 4355 (1992) (Commission suspended the requirement for equal access from pay telephones and other call aggregator equipment because of the potential for fraud).

[81] *See* Vanguard Comments on MCI Petition at 3-4. *See also* MCI Reply Comments on MCI Petition at 19.

authority to impose equal access and interconnection requirements, and the second is whether the Commission should exercise this authority to impose such obligations on some or all CMRS providers. For the reasons discussed below, we tentatively conclude that the Commission has authority under Section 201 of the Communications Act to order equal access and that, in principle, the imposition of equal access obligations on at least some CMRS providers is in the public interest. We further tentatively conclude that the Commission should address the equal access question separately with respect to each of the various mobile services comprising the CMRS marketplace and should weigh several specific factors before deciding whether to impose an equal access obligation upon particular types of mobile service providers. We seek comment on these tentative conclusions, on each of the proposed criteria described below, and on any other factors that we should weigh in making this determination.

31. Legal Authority/Public Interest Analysis. We tentatively conclude that we possess the authority to order CMRS providers to provide equal access to IXCs under Section 201 of the Communications Act.[82] Section 201(a) imposes on every common carrier engaged in interstate or foreign communication by wire or radio the duty to furnish service upon reasonable request. Section 201(a) also authorizes the Commission, where necessary or desirable in the public interest, to order common carriers to establish physical connections with other carriers.[83] Thus, the question under Section 201(a) is whether the public interest would be served by the imposition of equal access obligations on CMRS providers.[84] We tentatively conclude that the answer to this question depends in part upon an analysis of the market power of the various CMRS providers, and in part on whether imposing equal access obligations would serve other policy goals the Commission has identified as serving the public interest with regard to the regulation of commercial mobile radio services. The *CMRS Second Report* stated that these goals include promoting the efficient provision of service to consumers at reasonable prices, establishing a regulatory structure that will foster competition, and promoting and achieving the broadest possible access to telecommunications networks and services by all telecommunications users.[85] We tentatively conclude that the public interest determination with respect to equal access should include both a market power analysis and analysis of whether equal access would promote these other policy goals. We seek comment on our tentative conclusions regarding the

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[82] *See* 47 U.S.C. § 201.

[83] 47 U.S.C. § 201(a).

[84] *See, e.g.*, Mid-Texas Communications v. American Telephone and Telegraph Company, 615 F.2d 1372, 1379 (5th Cir. 1980), *rehearing denied*, 618 F.2d 716, *cert. denied*, 459 U.S. 1145 (1981) (the Commission considers a number of specific noncompetition-related factors in determining the public interest in interconnection cases); Phonetele, Inc. v. American Telephone and Telegraph Company, 664 F.2d 716 (9th Cir. 1981), *cert. denied*, 459 U.S. 1145 (1981), *on subsequent appeal*, 889 F.2d 224 (9th Cir. 1989), *cert. denied*, __ U.S. __, 112 S.Ct. 1283 (1992).

[85] *CMRS Second Report*, 9 FCC Rcd at 1417-22.

relevant legal standard, and on the public interest criteria we have identified. In addition, commenters should identify any other relevant factors or policy goals they believe should be included in a public interest analysis under Section 201.

32. The presence or absence of market power is an important factor in determining whether the imposition of equal access obligations on CMRS providers may be in the public interest.[86] In the past, we have imposed interconnection obligations where the market was not sufficiently competitive to ensure that Commission goals of promoting consumer choice of carrier and competitive service offerings were attained. Carriers possessing market power might deny interconnection and thereby preclude another carrier from gaining access to the public switched network and competing to serve end users. Thus, for example, previously we have exercised this power to order common carriers to provide interconnection to specialized common carriers[87] and to require LECs to provide the type of interconnection requested by Part 22 licensees.[88] Similarly, we have determined that Section 201 provides the authority for Commission jurisdiction over the allocations of NXX codes and the requirement of "good faith" negotiations for the terms and conditions of cellular interconnection arrangements.[89] In each of these instances, market power was an important consideration in determining to impose interconnection obligations upon certain common carriers.

33. In the *CMRS Second Report*, the Commission found that all CMRS providers, other than cellular licensees, currently lack market power and found that it was appropriate to examine individually the prevailing climate of competition with respect to each of the various mobile services comprising the CMRS marketplace. In the case of cellular service, the Commission noted that it had previously acknowledged that while competition in the provision of cellular service exists, the Commission could not yet determine that cellular services were fully competitive. Nonetheless, we concluded that the current state of competition in the cellular marketplace did not preclude exercise of our forbearance authority and committed to initiate a further proceeding to examine the development of competition in the cellular marketplace.[90]

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[86] Market power has been defined by the Justice Department to mean "the ability profitably to maintain prices above competitive levels for a significant period of time . . . ." United States Department of Justice, Federal Trade Commission, "Horizontal Merger Guidelines," (Apr. 2, 1992), at 4 & n.6 (explaining that "[s]ellers with market power also may lessen competition on dimensions other than price, such as product quality, service, or innovation").

[87] *See* Specialized Common Carrier, Docket No. 18920, 29 FCC 2d 870 (1970); *recon.* 31 FCC 2d 1106 (1971); *aff'd.* 513 F.2d 1142 (D.C.Cir. 1975).

[88] Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd 2910, 2913 (1987) (*Interconnection Order*).

[89] *Interconnection Order,* at 2912-13. *See also* Section III, *infra.*

[90] *CMRS Second Report,* 9 FCC Rcd at 1467.

34. We recognize that the imposition of equal access obligations when the service provider does not possess market power may not be in the public interest. Such action can have unintended consequences which could detract from or undermine the potential benefits of imposing equal access. For example, the costs of implementing equal access may be so high that it could force some smaller carriers out of the market, thereby reducing competition. More importantly, competition alone in a particular market may compel carriers to offer choices their customers want without the need of regulatory intervention. Thus, depending on the market characteristics of particular commercial mobile radio services, the need for an equal access obligation may be lessened or altogether absent. Accordingly, we seek comment on the need for mandatory equal access based upon the degree of competition faced by the various commercial mobile radio services individually, and how that need balances against the other public interest costs and benefits we identify below.

b. Application to Cellular Service Providers

35. Based on the substantial record developed in response to the MCI petition for rulemaking, we tentatively conclude that we should impose equal access obligations on cellular providers.[91] We seek comment on this tentative decision and on the costs and benefits of equal access discussed below.

36. Benefits. We tentatively conclude that requiring cellular providers to offer equal access to IXCs has the potential of producing at least four significant benefits that are consistent with the public interest goals identified above. First, equal access will benefit consumers by increasing choice and perhaps lowering the price of the long distance services originating or terminating on their cellular systems. In a marketplace that may not be fully competitive, allowing individual customers to choose their IXC places the decision about interexchange services directly in the hands of the end user rather than the mobile carrier. Shifting this decision to the end user creates incentives for the IXC to compete on the basis of price and other service features offered to end users, rather than those offered to the mobile carrier. If the decision about interexchange services is made by the cellular carrier, an IXC has no direct incentive to meet the needs of end users. Further, in a less-than-fully competitive marketplace, without an equal access requirement IXCs that might otherwise compete for the end user's business either may not be able to compete for that business, or may be forced to convince the end user to change the cellular provider to receive that IXC's service.

37. Second, equal access obligations for cellular providers can increase access of end users and other telecommunications providers to networks. Equal access could expand the range of IXCs that consumers could choose, which could enhance the usefulness of communications services and foster increased network usage. This, in turn, spreads recovery of fixed costs over a greater number of minutes so that prices can be reduced. Interconnected networks also

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[91] This equal access obligation would apply to the BOC cellular affiliates regardless of whether the *MFJ* court, at some future date, eliminates its equal access requirements.

improve the variety of service offerings and spur innovation, which is beneficial to all users of communications networks. A network of networks has the additional benefit of promoting competition among network providers on the basis of quality of service and rates rather than their affiliation with other carriers.

38. Third, ubiquitous cellular equal access would permit IXCs to develop service offerings for discounted long distance service that, for example, combines all of a customer's long distance calling, including residential wireline and cellular usage. Reduced rates for such services should lead to increased demand and more efficient usage of existing networks. In addition, cellular equal access would also encourage competition in the development of other nationwide customized IXC services. Without ubiquitous cellular equal access, customers may be blocked in their ability to access an IXC-provided virtual private network service or information service when originating a call while roaming in a non-equal access service area. Thus, under equal access, all cellular customers would benefit by not being limited to the menu of services and options their local carrier chooses to provide. Such service offerings would likely result in the type of increased competition among IXCs to develop attractive discount plans that currently exists in the landline markets.

39. Fourth, adopting equal access for IXCs would appear to be consistent with the principle of regulatory parity underlying the recent statutory amendment, *i.e.*, regulating similarly situated cellular carriers consistently may require that we adopt equal access for all cellular providers. Bell Atlantic, BellSouth and others argue that until the *MFJ* court removes the equal access requirements for BOC cellular licensees, in the interest of parity, other wireless service providers should be obligated to comply with the same rules as the BOC affiliates.[92] Equal access obligations will continue in force for BOC-affiliated cellular providers under the *MFJ* until they obtain judicial relief or favorable legislative action. Under these circumstances, disparate treatment of different cellular carriers with respect to equal access obligations may be inconsistent with congressional intent and the Commission's efforts in the *CMRS Second Report* to reshape our regulatory structure to give CMRS providers the opportunity to compete under comparable rules. We note here that this may also be true for any potentially competing mobile services, including broadband PCS or wide-area SMR systems.

40. Costs. Notwithstanding these potential benefits, there are costs to imposing equal access obligations, particularly where existing networks must be reconfigured to accommodate the obligation. Cellular providers not currently subject to equal access obligations would have to modify software in their switches to route traffic to a customer's preferred IXC, and some might have to replace switches as well as software. In addition, some CMRS carriers might have to change the type of interconnection they take from LECs, *e.g.*, upgrade to Type 2

[92] Bell Atlantic Comments in GN Docket No. 93-252 at 32-33; BellSouth Comments in GN Docket No. 93-252 at 34; Southwestern Comments in GN Docket No. 93-252 at 33.

interconnection, in order to implement equal access.[93] Moreover, substantial costs will be incurred to provide customer education and to establish and administer PIC selection processes and changes similar to those incurred in implementing landline equal access.

41. We also recognize the potential that certain economic efficiencies could be gained through vertical integration or bundling of services, and the potential that at least some of these would be lost if equal access is required. For example, McCaw and other cellular licensees argue that they are able to purchase interexchange service at bulk discounted rates and pass the savings onto their customers. If such efficiencies resulted in lower costs and therefore lower prices for end users, vertical integration could improve competition among cellular providers and among IXCs. It is not always clear, however, that lower costs for the cellular carrier necessarily translate into lower prices for the end user. Commenters who believe that such vertical integration serves the public interest are requested to provide specific data demonstrating the benefits for end users. We also recognize that with respect to bundling, if each of the bundled services is competitive, end users may not be precluded from choosing the service they want from other providers. Rather, it may provide consumers with benefits that disaggregated services would not.[94]

42. Weighing the Costs and Benefits. In the *CMRS Second Report* we found that there was insufficient evidence to conclude that the cellular marketplace was fully competitive, but concluded that it was sufficiently competitive to support the exercise of our forbearance authority.[95] For purposes of this analysis, we tentatively conclude that cellular consumers would benefit from the imposition of equal access obligations because such obligations would achieve the important public interest benefits described above. Cellular service is an established, rapidly growing service that provides many customers with alternative access to networks and services. Under equal access, cellular customers can potentially reap benefits through added choices of interexchange providers and new and innovative services. We tentatively conclude that the provision of equal access by cellular providers will produce substantial public interest benefits in the cellular services market by promoting customer choice and, consequently, competition in the interexchange marketplace, and that these benefits outweigh the potential costs. Unbundling cellular and interexchange services can lead to more accurate economic signals to consumers who can then make more rational purchasing decisions. We also find potential benefits in ensuring that cellular service is part of a network of networks, with consumers choosing the parts of the network they wish to use. We tentatively conclude that imposing equal access requirements on cellular providers would promote improved access to interexchange networks, and would have the benefit of regulating similarly situated carriers consistently. Thus, we tentatively propose to require cellular providers to offer exchange access service that is equal

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[93] For an explanation of the different types of interconnection see para. 105, *infra*.

[94] *See* Bundling of Cellular Customer Premises Equipment and Cellular Service, CC Docket No. 91-34, Report and Order, 7 FCC Rcd 4028 (1992).

[95] *CMRS Second Report*, 9 FCC Rcd at 1467.

in type, quality, and price to that provided to any IXC. We request comments on our tentative conclusion and on our cost-benefit analysis. We also request commenters to provide empirical cost information relevant to these determinations. Commenters should also address specifically whether the costs and benefits we have identified accurately portray today's marketplace, given that at least two new categories of service providers (wide-area SMR and broadband PCS) are poised to enter the CMRS market in the near future. Parties should also suggest what additional criteria we should consider in making our final determination.

43. We recognize that our preliminary analysis of the market position of cellular service assesses the current position of cellular service in the CMRS marketplace. With the advent of PCS, and the continuing development of wide-area SMR systems, cellular licensees will likely face many new competitors in the future. The current record does not thoroughly address the implications of developing competition for cellular service providers in the equal access context. We therefore seek comment on whether the advent of these new commercial mobile radio services should alter our tentative conclusion to impose equal access obligations on cellular providers.

c. Other Commercial Mobile Radio Services Providers

44. In the *CMRS Second Report*, we found that all CMRS providers other than cellular licensees currently lack market power.[96] In response to the *Notice,* the record supporting the *CMRS Second Report* garnered little commentary on whether service providers using PCS spectrum to offer commercial mobile radio service should be subject to equal access requirements.[97] We also have a very limited record regarding whether equal access obligations should be imposed on other CMRS providers, such as those that provide SMR service or improved mobile telephone services.[98] Thus, the record does not contain information sufficient to support a tentative conclusion regarding whether equal access obligations for other CMRS providers would serve the public interest. In this section, we discuss some of the issues raised by the commenters and seek further comment on whether equal access obligations for other CMRS providers would achieve the same public interest benefits we identified in the cellular context, given the different competitive situations and service characteristics of these other commercial mobile radio services.

45. Nextel has argued that there is no reason to require uniform treatment of non-cellular wireless providers, including SMR systems and wide-area SMRs, for equal access purposes,[99] because these carriers do not control a bottleneck. Nextel further asserts that

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[96] *Id.*

[97] *Id.* at 1493.

[98] For a list of those mobile services that constitute CMRS providers see para. 14, *supra.*

[99] Nextel Comments on MCI Petition at 5.

imposition of equal access burdens on its SMR systems would impose undue and unnecessary costs and administrative burdens on a start-up operation and would not, therefore, be in the public interest.[100] On the other hand, we believe that the service characteristics and capabilities of wide-area SMR systems will make them competitors to cellular providers, in which case considerations of regulatory parity might weigh in favor of imposing similar regulatory obligations should we ultimately impose equal access obligations on those providers. Similarly, broadband PCS holds the promise of being a full competitor for cellular service and a potentially effective substitute for the wired local loop. Thus, as we noted with respect to wide area SMRs, regulatory parity among providers of similar services might support imposing equal access obligations on broadband PCS providers.

46. Moreover, because these services are not yet fully developed, the costs of imposing the obligation would be lower than the costs of converting existing systems because carriers would not have to modify existing facilities to enable them to offer equal access; they could build this functionality into the network from the start. On the other hand, because PCS has not yet even been licensed for operation, we have little information about the competitive position PCS will hold in the marketplace. This is also true, albeit to a lesser extent, of wide-area SMR services which, although licensed, are fairly new. Because of this lack of marketplace experience, we believe caution requires that we impose no regulations before we fully understand the economic consequences of such an action. This is especially true in view of our observation that equal access obligations could impede possible economies of vertical integration, and may be unnecessary given our conclusion that broadband PCS and wide-area SMR providers lack market power.

47. With respect to paging services, we note that the *MFJ* court has determined that the BOCs' equal access obligations do not extend to paging affiliates.[101] The court determined that "the paging industry has developed independently of LATA boundary constraints" and that "in order to compete effectively in the paging market, paging services must be offered on an area-wide basis."[102] Given that paging is a one-way service, application of equal access does not seem relevant because the paging customer does not access an IXC's network. Rather, the paging carrier receives the call from the caller's chosen carrier and then sends the page to its customer. Paging services historically have been purchased as a single service, without separate charges for interstate and intrastate portions of the calls. We question whether, given this fact,

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[100] *Id.* at 7.

[101] *See* Memorandum and Order, United States v. Western Electric Co., No. 82-0192 (D.D.C. Feb. 16, 1989). *See also*, United States v. Western Electric Co., No. 82-0192 (D.D.C. June 20, 1986), at para. 4; United States v. Western Electric Co., No. 82-0192 (D.D.C. May 14, 1986), at 3; United States v. Western Electric Co., No. 82-0192 (D.D.C. Aug. 8, 1986), at 3; United States v. Western Electric Co., No. 82-0192 (D.D.C. Sept. 22, 1987), at 3; United States v. Western Electric Co., No. 82-0192 (D.D.C. June 16, 1988), at 3.

[102] United States v. Western Electric Co., No. 82-0192 (D.D.C. Feb. 16, 1989) at 4.

imposing an equal access obligation will benefit consumers sufficiently to alter this method of pricing. In addition, no commenter argues that paging or narrowband PCS, which is anticipated to consist largely of advanced paging and messaging services, should be subject to equal access obligations.[103] We seek comment on whether equal access obligations should be extended to paging carriers, or to narrowband PCS providers. We also seek comment on any technical differences that may distinguish these services sufficiently from other CMRS providers to justify a different regulatory treatment.

48. We seek further comment on the costs and benefits of imposing equal access obligations on all other CMRS providers, and all resellers of CMRS, including Part 22 public mobile services; Public Coast Stations; 220 MHz Private Land Mobile, except for internal use or when not interconnected with the public switched network; business radio service, except for internal use or when not interconnected with the public switched network; narrowband PCS; certain MSS;[104] and air-to-ground service.[105] We note that there is no indication of the extent to which these other CMRS systems pass traffic to or receive traffic from IXCs. Consequently, we seek market studies detailing the extent of such calling on these systems. We seek further comment on whether the technical limitations of other CMRS providers' networks would require significantly more burdensome network modifications to achieve equal access than would cellular.

49. In conclusion, we seek comment on these preliminary observations and on whether equal access obligations should be extended to any CMRS providers other than cellular carriers. Commenters should address the particularities of each of these commercial mobile radio services and on how the cost/benefit analysis we applied to cellular carriers or other analytical frameworks proposed by individual parties apply to these particular service characteristics. We also seek comment on the technical issues associated with requiring other CMRS providers to provide equal access. Commenters should provide information on: (1) existing methods of

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[103] *See* Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services, GEN Docket No. 90-314, First Report and Order, 8 FCC Rcd 7162, 7164 (*Narrowband PCS Order*), *recon.*, 9 FCC Rcd 1309 (1994) (*Narrowband PCS Reconsideration Order*).

[104] Given the nature of this service, and its broad coverage area, there is some question as to how an equal access obligation would be imposed.

[105] *See CMRS Second Report*, 9 FCC Rcd at 1443-1463, 1508. We note that we are also reviewing the ramifications of an equal access obligation for air-to-ground service providers as we decide whether TOCSIA obligations apply to air-to-ground providers. *See* 47 U.S.C. § 226. GTE has argued that air-to-ground carriers should be exempt from TOCSIA because, *inter alia*, they are unable to provide equal access. *See* Petition for Declaratory Ruling That GTE Airphone, GTE Railphone, and GTE Mobilnet Are Not Subject to TOCSIA, MSD-92-14, Declaratory Ruling, 8 FCC Rcd 6171 (Com.Car.Bur. 1993), *recon. pending*.

interconnection for all CMRS providers; and (2) technological modifications required for conversion to equal access for all CMRS providers.

C. Implementation of Equal Access Obligations

50. Equal access is defined under the *MFJ* as access that is "equal in type, quality, and price to that provided to AT&T and its affiliates."[106] The Commission used this definition in adopting rules to implement equal access for independent LECs.[107] Historically, equal access has included a program of presubscription, balloting and allocation procedures, technical interconnection standards, and the "1+" form of access for presubscribed lines, with 10XXX access for non-presubscribed access.[108] In its petition, MCI did not define the minimum requirements that the equal access obligation should entail. Given our tentative conclusion that equal access, in concept, should be extended to at least some CMRS providers, the next question is whether this requirement should include all of the essential elements of landline equal access. Several commenters have either raised issues concerning implementation or proposed elements that they argue should be part of any equal access obligation we might impose. We discuss these issues and proposals below. Commenters should address the following issues, as well as any other issues relevant to the implementation of equal access, and should comment on our tentative conclusions.

51. To the extent that commenters have already addressed the specific equal access requirements listed below, they have primarily discussed the implications of imposing equal access on cellular providers. Commenters should also address whether any of the equal access obligations described below should be adopted for other CMRS providers. In addition, parties should comment on whether the elements of the equal access obligation should be adapted to the technical or service parameters, or other specific circumstances of the service for which equal access is mandated.

1. Timing of Equal Access Conversion/Phase-in

52. Pursuant to the *MFJ*, the BOCs were required to convert their end offices to equal access gradually.[109] The BOCs were required to offer equal access from end offices serving at least one-third of their exchange access lines by September 1, 1985. The BOCs were also required to convert their remaining end offices to equal access, to the extent that there was a

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[106] 552 F.Supp. at 227.

[107] *See, e.g., Allocation Order*, 101 FCC 2d at 911.

[108] *See id.* at 924-927.

[109] *See MFJ*, 552 F.Supp. at 232-234.